

**Fair Employment and Housing Commission
Transfer Fair Employment and Housing Appeals to
Department of Fair Employment and Housing
Trailer Bill**

Amend Government Code Section 11139.5 as follows:

11139.5. The Secretary of the Health and Welfare Agency, with the advice and concurrence of the Department of Fair Employment and Housing, shall establish standards for determining which persons are protected by this article and standards for determining what practices are discriminatory. The secretary, with the cooperation of the Department of Fair Employment and Housing, shall assist state agencies in coordinating their programs and activities and shall consult with such agencies, as necessary, so that consistent policies, practices, and procedures are adopted with respect to the enforcement of the provisions of the article.

Amend Government Code Section 12901 as follows:

12901. (a) There is in the state government, in the State and Consumer Services Agency, the Department of Fair Employment and Housing. The department is under the direction of an executive officer known as the Director of Fair Employment and Housing, who is appointed by the Governor, subject to confirmation by the Senate, and who holds office at the pleasure of the Governor. The annual salary of the director is provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2.

(b) Unless the context clearly requires otherwise, whenever the term "Fair Employment and Housing Commission" appears in any statute, regulation, or contract, it shall be deemed to refer to the Department of Fair Employment and Housing, and whenever the term "executive secretary of the Fair Employment and Housing Commission" appears in statute, regulation, or contract, it shall be deemed to refer to the Director of Fair Employment and Housing. In instances where the term "commission" appears in any statute, and means the Fair Employment and Housing Commission, it shall be deemed to refer to either the Department of Fair Employment and Housing or the Director of the Department of Fair Employment and Housing.

Repeal Government Code Sections 12903-12906 as follows:

~~12903. There is in the State and Consumer Services Agency the Fair Employment and Housing Commission. The commission shall consist of seven members, to be known as commissioners, who shall be appointed by the Governor, by and with the advice and consent of the Senate, and one of whom shall be designated as chairperson by the Governor. The term of office of each member of the commission shall be for four years.~~

~~12904. Any member chosen to fill a vacancy on the commission occurring otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he or she is to succeed. Four members of the commission shall constitute a quorum for the purpose of conducting the business thereof.~~

~~12905. Each member of the commission shall serve without compensation but shall receive one hundred dollars (\$100) for each day actually spent in the performance of his or her duties under this part and shall also be entitled to his or her expenses actually and necessarily incurred in the performance of his or her duties.~~

~~12906. Any member of the commission may be removed by the Governor for inefficiency, for neglect of duty, misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard thereon.~~

Amend Government Code Section 12930 as follows:

12930. The department shall have the following functions, powers, and duties:

(a) To establish and maintain a principal office and any other offices within the state as are necessary to carry out the purposes of this part.

(b) To meet and function at any place within the state.

(c) To appoint attorneys, investigators, conciliators, and other employees as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(d) To obtain upon request and utilize the services of all governmental departments and agencies and, in addition, with respect to housing discrimination, of conciliation councils.

(e) To adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the functions and duties of the department pursuant to this part and to interpret, implement, and apply all provisions of this part; to regulate the conduct of hearings held pursuant to Sections 12967 and 12981.

(f)(1) To receive, investigate, and conciliate complaints alleging practices made unlawful pursuant to Chapter 6 (commencing with Section 12940).

(2) To receive, investigate, and conciliate complaints alleging a violation of Section 51, 51.5, 51.7, 54, 54.1, or 54.2 of the Civil Code. The remedies and procedures of this part shall be independent of any other remedy or procedure that might apply.

(g) In connection with any matter under investigation or in question before the department pursuant to a complaint filed under Section 12960, 12961, or 12980:

(1) To issue subpoenas to require the attendance and testimony of witnesses and the production of books, records, documents, and physical materials.

(2) To administer oaths, examine witnesses under oath and take evidence, and take depositions and affidavits.

(3) To issue written interrogatories.

(4) To request the production for inspection and copying of books, records, documents, and physical materials.

(5) To petition the superior courts to compel the appearance and testimony of witnesses, the production of books, records, documents, and physical materials, and the answering of interrogatories.

(h) To issue accusations pursuant to Section 12965 or 12981 and to prosecute those accusations before the commission director or his or her designee.

(i) To issue those publications and those results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination in employment on the bases enumerated in this part and discrimination in housing because of race, religious creed, color, sex, marital status, national origin, ancestry, familial status, disability, or sexual orientation.

(j) To investigate, approve, certify, decertify, monitor, and enforce nondiscrimination programs proposed by a contractor to be engaged in pursuant to Section 12990.

(k) To conduct hearings pursuant to Sections 12967 and 12981.

(l) To conduct mediations at any time after a complaint is filed pursuant to Section 12960, 12961, or 12980. The department may halt mediation at any time to pursue an investigation.

(m) To create or provide financial or technical assistance to any advisory agencies and conciliation councils, local or otherwise, as in its judgment will aid in effectuating the purposes of this part, and to empower them to study the problems of discrimination in all or specific fields of human relationships or in particular instances of employment discrimination on the bases enumerated in this part or in specific instances of housing discrimination because of race, religious creed, color, national origin, ancestry, familial status, disability, marital status, sex, or sexual orientation and to foster, through community effort or otherwise, good will, cooperation, and conciliation among the groups and elements of the population of the state and to make recommendations for the development of policies and procedures in general. These advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay.

(n) With respect to findings and orders made pursuant to this part, to establish a system of published opinions that shall serve as precedent in interpreting and applying the provisions of this part. Department findings, orders, and opinions in an adjudicative proceeding are subject to Section 11425.60.

(o) Notwithstanding Sections 11370.3 and 11502, to appoint administrative law judges, as it may deem necessary, to conduct hearings and mediations. Each administrative law judge shall possess the qualifications established by the State Personnel Board for the particular class of position involved.

~~(k)~~(p) To render annually to the Governor and to the Legislature a written report of its activities and of its recommendations.

Repeal Government Code Sections 12935 as follows:

~~12935. The commission shall have the following functions, powers, and duties:~~

~~(a) To adopt, promulgate, amend, and rescind suitable rules, regulations, and standards (1) to interpret, implement, and apply all provisions of this part, (2) to regulate the conduct of hearings held pursuant to Sections 12967 and 12981, and (3) to carry out all other functions and duties of the commission pursuant to this part.~~

~~(b) To conduct hearings pursuant to Sections 12967 and 12981.~~

~~(c) To conduct mediations at the request of the department at any time after a complaint is filed pursuant to Section 12960, 12961, or 12980. The department may withdraw a request for mediation at any time to pursue an investigation.~~

~~(d) To establish and maintain a principal office within the state and to meet and function at any place within the state.~~

~~(e) To appoint an executive secretary, and any attorneys and other employees as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.~~

~~(f) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, examine any person under oath and, in connection therewith, to require the production of any books or papers relating to any matter under investigation or in question before the commission.~~

~~(g) To create or provide financial or technical assistance to any advisory agencies and conciliation councils, local or otherwise, as in its judgment will aid in effectuating the purposes of this part, and to empower them to study the problems of discrimination in all or specific fields of human relationships or in particular instances of employment~~

~~discrimination on the bases enumerated in this part or in specific instances of housing discrimination because of race, religious creed, color, national origin, ancestry, familial status, disability, marital status, sex, or sexual orientation and to foster, through community effort or otherwise, good will, cooperation, and conciliation among the groups and elements of the population of the state and to make recommendations to the commission for the development of policies and procedures in general. These advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay.~~

~~(h) With respect to findings and orders made pursuant to this part, to establish a system of published opinions that shall serve as precedent in interpreting and applying the provisions of this part. Commission findings, orders, and opinions in an adjudicative proceeding are subject to Section 11425.60.~~

~~(i) To issue publications and results of inquiries and research that in its judgment will tend to promote good will and minimize or eliminate unlawful discrimination. These publications shall include an annual report to the Governor and the Legislature of its activities and recommendations.~~

~~(j) Notwithstanding Sections 11370.3 and 11502, to appoint administrative law judges, as it may deem necessary, to conduct hearings and mediations. Each administrative law judge shall possess the qualifications established by the State Personnel Board for the particular class of position involved. The hearing officers of the commission shall become administrative law judges on the effective date of this subdivision.~~

Amend Government Code Section 12965 as follows:

12965. (a) In the case of failure to eliminate an unlawful practice under this part through conference, conciliation, or persuasion, or in advance thereof if circumstances warrant, the director in his or her discretion may cause to be issued in the name of the department a written accusation. The accusation shall contain the name of the person, employer, labor organization, or employment agency accused, which shall be known as the respondent, shall set forth the nature of the charges, shall be served upon the respondent together with a copy of the verified complaint, as amended, and shall require the respondent to answer the charges at a hearing.

For any complaint treated by the director as a group or class complaint for purposes of investigation, conciliation, and accusation pursuant to Section 12961, an accusation shall be issued, if at all, within two years after the filing of the complaint. For any complaint alleging a violation of Section 51.7 of the Civil Code, an accusation shall be issued, if at all, within two years after the filing of the complaint. For all other complaints, an accusation shall be issued, if at all, within one year after the filing of a complaint. If the director determines, pursuant to Section 12961, that a complaint investigated as a group or class complaint under Section 12961 is to be treated as a group or class complaint for purposes of conciliation and accusation as well, that determination shall be made and shall be communicated in writing within one year after the filing of the complaint to each person, employer, labor organization, employment agency, or public entity alleged in the complaint to have committed an unlawful practice.

(b) If an accusation is not issued within 150 days after the filing of a complaint, or if the department earlier determines that no accusation will issue, the department shall promptly notify, in writing, the person claiming to be aggrieved that the department shall issue, on his or her request, the right-to-sue notice. This notice shall indicate that the person claiming to be aggrieved may bring a civil action under this part against the person, employer, labor organization, or employment agency named in the verified complaint within one year from the date of that notice. If the person claiming to be aggrieved does not request a right-to-sue notice, the department shall issue the notice

upon completion of its investigation, and not later than one year after the filing of the complaint. A city, county, or district attorney in a location having an enforcement unit established on or before March 1, 1991, pursuant to a local ordinance enacted for the purpose of prosecuting HIV/AIDS discrimination claims, acting on behalf of any person claiming to be aggrieved due to HIV/AIDS discrimination, may also bring a civil action under this part against the person, employer, labor organization, or employment agency named in the notice. The superior courts of the State of California shall have jurisdiction of those actions, and the aggrieved person may file in these courts. An action may be brought in any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to the practice are maintained and administered, or in the county in which the aggrieved person would have worked or would have had access to the public accommodation but for the alleged unlawful practice, but if the defendant is not found within any of these counties, an action may be brought within the county of the defendant's residence or principal office. A copy of any complaint filed pursuant to this part shall be served on the principal offices of the department and of the commission. The remedy for failure to send a copy of a complaint is an order to do so. Those actions may not be filed as class actions or may not be maintained as class actions by the person or persons claiming to be aggrieved where those persons have filed a civil class action in the federal courts alleging a comparable claim of employment discrimination against the same defendant or defendants. In actions brought under this section, the court, in its discretion, may award to the prevailing party reasonable attorney's fees and costs, including expert witness fees, except where the action is filed by a public agency or a public official, acting in an official capacity.

(c) (1) If an accusation includes a prayer either for damages for emotional injuries as a component of actual damages, or for administrative fines, or for both, or if an accusation is amended for the purpose of adding a prayer either for damages for emotional injuries as a component of actual damages, or for administrative fines, or both, the respondent may within 30 days after service of the accusation or amended accusation, elect to transfer the proceedings to a court in lieu of a hearing pursuant to subdivision (a) by serving a written notice to that effect on the department, ~~the commission~~, and the person claiming to be aggrieved. The ~~commission~~ department shall prescribe the form and manner of giving written notice.

(2) No later than 30 days after the completion of service of the notice of election pursuant to paragraph (1), the department shall dismiss the accusation and shall, either itself or, at its election, through the Attorney General, file in the appropriate court an action in its own name on behalf of the person claiming to be aggrieved as the real party in interest. In this action, the person claiming to be aggrieved shall be the real party in interest and shall have the right to participate as a party and be represented by his or her own counsel. Complaints filed pursuant to this section shall be filed in the superior court in any county in which unlawful practices are alleged to have been committed, in the county in which records relevant to the alleged unlawful practices are maintained and administered, or in the county in which the person claiming to be aggrieved would have worked or would have had access to public accommodation, but for the alleged unlawful practices. If the defendant is not found in any of these counties, the action may be brought within the county of the defendant's residence or principal office. Those actions shall be assigned to the court's delay reduction program, or otherwise given priority for disposition by the court in which the action is filed.

(3) A court may grant as relief in any action filed pursuant to this subdivision any relief a court is empowered to grant in a civil action brought pursuant to subdivision (b), in addition to any other relief that, in the judgment of the court, will effectuate the purpose of this part. This relief may include a requirement that the employer conduct training for all employees, supervisors, and management on the requirements of this part, the rights

and remedies of those who allege a violation of this part, and the employer's internal grievance procedures.

(4) The department may amend an accusation to pray for either damages for emotional injury or for administrative fines, or both, provided that the amendment is made within 30 days of the issuance of the original accusation.

(d) (1) Notwithstanding subdivision (b), the one-year statute of limitations, commencing from the date of the right-to-sue notice by the Department of Fair Employment and Housing, to the person claiming to be aggrieved, shall be tolled when all of the following requirements have been met:

(A) A charge of discrimination or harassment is timely filed concurrently with the Equal Employment Opportunity Commission and the Department of Fair Employment and Housing.

(B) The investigation of the charge is deferred by the Department of Fair Employment and Housing to the Equal Employment Opportunity Commission.

(C) A right-to-sue notice is issued to the person claiming to be aggrieved upon deferral of the charge by the Department of Fair Employment and Housing to the Equal Employment Opportunity Commission.

(2) The time for commencing an action for which the statute of limitations is tolled under paragraph (1) expires when the federal right-to-sue period to commence a civil action expires, or one year from the date of the right-to-sue notice by the Department of Fair Employment and Housing, whichever is later.

(3) This subdivision is intended to codify the holding in *Downs v. Department of Water and Power of City of Los Angeles* (1997) 58 Cal.App.4th 1093.

(e) (1) Notwithstanding subdivision (b), the one-year statute of limitations, commencing from the date of the right-to-sue notice by the Department of Fair Employment and Housing, to the person claiming to be aggrieved, shall be tolled when all of the following requirements have been met:

(A) A charge of discrimination or harassment is timely filed concurrently with the Equal Employment Opportunity Commission and the Department of Fair Employment and Housing.

(B) The investigation of the charge is deferred by the Equal Employment Opportunity Commission to the Department of Fair Employment and Housing.

(C) After investigation and determination by the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission agrees to perform a substantial weight review of the determination of the department or conducts its own investigation of the claim filed by the aggrieved person.

(2) The time for commencing an action for which the statute of limitations is tolled under paragraph (1) shall expire when the federal right-to-sue period to commence a civil action expires, or one year from the date of the right-to-sue notice by the Department of Fair Employment and Housing, whichever is later.

Amend Government Code Section 12967 as follows:

12967. The ~~commission~~ department's administrative law judges shall hold hearings on accusations issued pursuant to Section 12965 and shall determine the issues raised therein.

Amend Government Code Section 12969 as follows:

12969. The case in support of the accusation shall be presented before the ~~commission~~ director or his or her designee by the attorneys or agents of the department. Any

~~commissioner~~ department staff who, in regard to a particular case, shall have previously been assigned to engage in investigation or conciliation endeavors or shall otherwise have been or be personally or professionally connected with the parties or factual situation of the original complaint upon which the accusation is based, shall not participate in the hearing except as a witness and shall not give his or her opinion of the merits of the case, nor shall he or she participate in the director's deliberations ~~of the commission~~ in such case. In connection with complaints initiated by the director, ~~the personal or professional association of the commissioners with the director~~ shall not ~~prohibit the commissioners from participating~~ in the deliberations of such cases, and such case shall be decided by department staff as designated by the director. In any hearing, the content of discussions or endeavors at conciliation shall not be received in evidence.

Amend Government Code Section 12970 as follows:

12970. (a) If the ~~commission~~ director or his or her designee finds that a respondent has engaged in any unlawful practice under this part, ~~it he or she~~ shall state ~~its~~ their findings of fact and determination and shall issue and cause to be served on the parties an order requiring the respondent to cease and desist from the unlawful practice and to take action, including, but not limited to, any of the following:

- (1) The hiring, reinstatement, or upgrading of employees, with or without backpay.
- (2) The admission or restoration to membership in any respondent labor organization.
- (3) The payment of actual damages as may be available in civil actions under this part, except as otherwise provided in this section. Actual damages include, but are not limited to, damages for emotional injuries if the accusation or amended accusation prays for those damages. Actual damages awarded under this section for emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses shall not exceed, in combination with the amounts of any administrative fines imposed pursuant to subdivision (c), one hundred fifty thousand dollars (\$150,000) per aggrieved person per respondent.
- (4) Notwithstanding paragraph (3), the payment of actual damages up to one hundred fifty thousand dollars (\$150,000) assessed against a respondent for a violation of Section 51.7 of the Civil Code, as an unlawful practice under this part.
- (5) Affirmative or prospective relief to prevent the recurrence of the unlawful practice.
- (6) A report to the ~~commission~~ department as to the manner of compliance with the ~~commission's~~ director's order.

(b) An unlawful practice under this part alone is not sufficient to sustain an award of actual damages pursuant to this section. The department is required to prove, by a preponderance of the evidence, that an aggrieved person has sustained actual injury. In determining whether to award damages for emotional injuries, and the amount of any award for these damages, the ~~commission~~ director or his or her designee shall consider relevant evidence of the effects of discrimination on the aggrieved person with respect to any or all of the following:

- (1) Physical and mental well-being.
- (2) Personal integrity, dignity, and privacy.
- (3) Ability to work, earn a living, and advance in his or her career.
- (4) Personal and professional reputation.
- (5) Family relationships.
- (6) Access to the job and ability to associate with peers and coworkers.

The ~~commission~~ director or his or her designee shall also consider the duration of the emotional injury, and whether that injury was caused or exacerbated by an aggrieved

person's knowledge of a respondent's failure to respond adequately to, or to correct, the discriminatory practice or by the egregiousness of the discriminatory practice.

(c) In addition to the foregoing, in order to vindicate the purposes and policies of this part, the ~~commission~~ director or his or her designee may assess against the respondent, if the accusation or amended accusation so prays, an administrative fine per aggrieved person per respondent, the amount of which shall be determined in accordance with the combined amount limitation of paragraph (3) of subdivision (a).

(d) In determining whether to assess an administrative fine pursuant to this section, the ~~commission~~ director or his or her designee shall find that the respondent has been guilty of oppression, fraud, or malice, expressed or implied, as required by Section 3294 of the Civil Code. In determining the amount of fines, the commission shall consider relevant evidence of, including, but not limited to, the following:

- (1) Willful, intentional, or purposeful conduct.
- (2) Refusal to prevent or eliminate discrimination.
- (3) Conscious disregard for the rights of employees.
- (4) Commission of unlawful conduct.
- (5) Intimidation or harassment.
- (6) Conduct without just cause or excuse.
- (7) Multiple violations of the Fair Employment and Housing Act.

The moneys derived from an administrative fine assessed pursuant to this subdivision shall be deposited in the General Fund. No administrative fine shall be assessed against a public entity. The ~~commission~~ director shall have no authority to award punitive damages as a remedy for a finding of employment discrimination.

(e) In addition to the foregoing, in order to vindicate the purposes and policies of this part, the ~~commission~~ director or his or her designee may assess against the respondent if the accusation or amended accusation so prays, a civil penalty of up to twenty-five thousand dollars (\$25,000) to be awarded to a person denied any right provided for by Section 51.7 of the Civil Code, as an unlawful practice prohibited under this part.

(f) If the ~~commission~~ director or his or her designee finds the respondent has engaged in an unlawful practice under this part, and the respondent is licensed or granted a privilege by an agency of the state to do business, provide a service, or conduct activities, and the unlawful practice is determined to have occurred in connection with the exercise of that license or privilege, the ~~commission~~ director or his or her designee shall provide the licensing or privilege granting agency with a copy of its decision or order.

(g) If the ~~commission~~ director or his or her designee finds that a respondent has not engaged in an unlawful practice under this part, the ~~commission~~ director or his or her designee shall state its findings of fact and determination and issue and cause to be served on the parties an order dismissing the accusation as to that respondent.

(h) Any findings and determination made or any order issued pursuant to this section shall be written and shall indicate the identity of the ~~members of the commission~~ department staff who participated therein.

(i) Any order issued by the ~~commission~~ director or his or her designee shall have printed on its face references to the rights of appeal of any party to the proceeding to whose position the order is adverse.

(j) If the ~~commission~~ director or his or her designee finds that a respondent has engaged in an unlawful practice under this part, and it appears that this practice consisted of acts described in Section 243.4, 261, 262, 286, 288, 288a, or 289 of the Penal Code, the ~~commission~~ department, with the consent of the complainant, shall provide the local district attorney's office with a copy of its decision and order.

(k) Notwithstanding Section 12960, if the ~~commission~~ director or his or her designee finds that a respondent has engaged in unlawful discrimination in housing under Section

12948, the remedies afforded in Section 12987 or any other provision in this part pertaining to housing discrimination, shall apply.

Amend Government Code Section 12972 as follows:

12972. (a) The ~~commission~~ department shall conduct all actions and procedures in accordance with its procedural regulations.

(b) (1) If the ~~commission~~ department does not have a procedural regulation on a particular issue, the commission shall rely upon pertinent provisions of the Administrative Procedure Act (Chapter 4 (commencing with Section 11370) of Part 1).

(2) Notwithstanding paragraph (1), the Administrative Adjudication Bill of Rights set forth in Article 6 (commencing with Section 11425.10) of Chapter 4.5 of Part 1, and the rules for judicial review set forth in Section 11523, shall apply to the ~~commission~~ department.

(c) In addition to the discovery available to each party pursuant to subdivision (a), the department and the respondent may each cause a single deposition to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure.

Amend Government Code Section 12973 as follows:

12973. (a) Within one year of the effective date of every final order or decision issued pursuant to this part, the department shall conduct a compliance review to determine whether the order or decision has been fully obeyed and implemented.

(b) If the time for judicial review of a final ~~commission~~ order or decision has lapsed, or if all means of judicial review have been exhausted, the department may apply to the superior court in any county in which an action could have been brought under subdivision (b) of Section 12965 for the enforcement of the order or decision or order as modified in accordance with a decision on judicial review. If, after a hearing, the court determines that an order or decision has been issued by the ~~commission director~~ and that either the time limits for judicial review have lapsed, or the order or decision was upheld in whole or in part on judicial review, the court shall issue a judgment and order enforcing the order or decision or order as modified in accordance with a decision on judicial review. The court shall not review the merits of the order or decision. The court's judgment shall be nonappealable and shall have the same force and effect as, and shall be subject to all the provisions of law relating to, a judgment in a civil action.

(c) Notwithstanding subdivisions (a) and (b), where the reviewing court denies a petition for writ of mandate seeking review of a ~~commission director's~~ order or decision, the court shall enter judgment denying the petition and enforcing the ~~commission's~~ director's final order or decision.

(d) If the ~~commission director~~ has found that a respondent has engaged in an unlawful practice under this part and is liable for actual damages, an administrative fine, or a civil penalty, any amount due to that respondent by a state agency may be offset to satisfy the ~~commission's~~ final order or decision.

(e) Notwithstanding any other provision of law, the ~~commission~~ department is not liable for attorney's fees of parties to the administrative adjudication of cases, ~~brought before the commission,~~ including proceedings brought pursuant to Section 11523 of this code and Section 1094.5 of the Code of Civil Procedure.

Amend Government Code Section 12975 as follows:

12975. Any person who shall willfully resist, prevent, impede or interfere with any member of the department ~~or the commission~~ or any of its agents or employees in the performance of duties pursuant to the provisions of this part relating to employment discrimination, or who shall in any manner willfully violate an order of the ~~commission~~ director relating to such matter, is guilty of a misdemeanor, punishable by imprisonment in a county jail, not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or both.

Amend Government Code Section 12981 as follows:

12981. (a) In the case of failure to eliminate a violation of Section 12955, 12955.1, or 12955.7 that has occurred, or is about to occur, through conference, conciliation, and persuasion, or in advance thereof if circumstances warrant, the ~~director~~ department shall cause to be issued ~~in the name of the department~~, notwithstanding Section 12971, a written accusation, in the same manner and with the same powers as provided in Section 12965, except that where the provisions of this article provide greater rights and remedies to an aggrieved person than Section 12965, the provisions of this article shall prevail. An accusation alleging an unfair housing practice shall be issued within 100 days after the filing of a complaint unless it is impracticable to do so. The accusation shall require the respondent to answer the charges at an administrative hearing or civil trial as elected by the parties pursuant to Section 12989. Any aggrieved person may intervene as a matter of right in the proceeding, and the appeal or other judicial review of that proceeding.

(b) If the department determines that an allegation concerns the legality of any zoning or other land use law or ordinance, the department or the Attorney General shall take appropriate action with respect to the complaint according to the procedures established in this part for other complaints of housing discrimination.

(c) ~~The commission~~ director or his or her designee shall hold hearings on accusations issued pursuant to subdivision (a) in the same manner and with the same powers as provided in Sections 12967 to 12972, inclusive, except that where the provisions of this article provide greater rights and remedies to an aggrieved person than do Sections 12967 to 12972, inclusive, the provisions of this article shall prevail. ~~The commission~~ director or his or her designee shall make final administrative disposition of a complaint alleging unfair housing practices within one year of the date of filing of the complaint, unless it is impracticable to do so. If the ~~department~~ director or his or her designee is unable to make final administrative disposition of a complaint within one year, it shall notify the complainant and the respondent, in writing, of its reasons for not doing so.

(d) Within one year of the effective date of every final order or decision issued pursuant to this part, the department shall conduct a compliance review to determine whether the order or decision has been fully obeyed and implemented.

(e) Whenever the department has reasonable cause to believe that a respondent has breached a conciliation agreement, the department shall refer the matter to the Attorney General with a recommendation that a civil action be filed for the enforcement of the agreement.

(f) If the time for judicial review of a final commission order or decision has lapsed, or if all means of judicial review have been exhausted, the department may apply to the superior court in any county in which an action could have been brought under subdivision (b) of Section 12965 for the enforcement of the order or decision or order as

modified in accordance with a decision on judicial review. If, after a hearing, the court determines that an order or decision has been issued by the commission and that either the time limits for judicial review have lapsed, or the order or decision was upheld in whole or in part on judicial review, the court shall issue a judgment and order enforcing the order or decision or order as modified in accordance with a decision on judicial review. The court shall not review the merits of the order or decision. The court's judgment shall be nonappealable and shall have the same force and effect as, and shall be subject to all the provisions of law relating to, a judgment in a civil action.

Amend Government Code Section 12985 as follows:

12985. When a person is contacted by the department, ~~a commissioner~~, or a member of the department's staff, following the filing of a complaint against that person, the person shall be informed whether the contact is for the purpose of investigation or conference, conciliation, or persuasion; and if it is for conference, conciliation, or persuasion, the person shall be informed that all matters relating thereto are privileged.

Amend Government Code Section 12987 as follows:

12987. (a) If the ~~commission~~ director or his or her designee, after hearing, finds that a respondent has engaged in any unlawful practice as defined in this part, the ~~commission~~ director or his or her designee shall state ~~its~~ his or her findings of fact and shall issue and cause to be served on the respondent an order requiring the respondent to cease and desist from the practice and to take those actions, as, in the judgment of ~~commission~~ director or his or her designee, will effectuate the purpose of this part, including, but not limited to, any of the following:

(1) The sale or rental of the housing accommodation if it is still available, or the sale or rental of a like housing accommodation, if one is available, or the provision of financial assistance, terms, conditions, or privileges previously denied in violation of subdivision (f) of Section 12955 in the purchase, organization, or construction of the housing accommodation, if available.

(2) Affirmative or prospective relief, including injunctive or other equitable relief.

(3) The payment to the complainant of a civil penalty against any named respondent, not to exceed sixteen thousand dollars (\$16,000), unless, in a separate accusation, the respondent has been adjudged to have, with intent, committed a prior violation of Section 12955. If the respondent has, in a separate accusation, been adjudged to have committed a prior violation of Section 12955 within the five years preceding the filing of the complaint, the amount of the civil penalty may exceed sixteen thousand dollars (\$16,000), but may not exceed thirty-seven thousand five hundred dollars (\$37,500). If the respondent, in separate accusations, has been adjudged to have, with intent, violated Section 12955 two or more times within the seven-year period preceding the filing of the complaint, the civil penalty may exceed thirty-seven thousand five hundred dollars (\$37,500), but may not exceed sixty-five thousand dollars (\$65,000). All civil penalties awarded under this provision shall be collected by the department. The ~~commission~~ director or his or her designee may award the prevailing party, other than the state, reasonable attorney's fees and costs against any party other than the state, including expert witness fees.

(4) The payment of actual damages to the complainant.

(b) In determining whether to assess a civil penalty pursuant to this section, the ~~commission~~ director or his or her designee shall find that the respondent has been guilty

of oppression, fraud, or malice, expressed or implied, as required by Section 3294 of the Civil Code. In determining the amount of a civil penalty, ~~the commission director or his or her designee~~ shall consider Section 12955.6 and relevant evidence of, including, but not limited to, the following:

- (1) Willful, intentional, or purposeful conduct.
- (2) Refusal to prevent or eliminate discrimination.
- (3) Conscious disregard for fair housing rights.
- (4) Commission of unlawful conduct.
- (5) Intimidation or harassment.
- (6) Conduct without just cause or excuse.
- (7) Multiple violations of the Fair Employment and Housing Act.

(c) If ~~the commission director or his or her designee~~ finds that the respondent has engaged in an unlawful practice under this part, and the respondent is licensed or granted a privilege by an agency of the state or the federal government to do business, provide a service, or conduct activities, and the unlawful practice is determined to have occurred in connection with the exercise of that license or privilege, ~~the commission director or his or her designee~~ shall provide the licensing or privilege granting agency with a copy of its decision or order.

(d) If ~~the commission director or his or her designee~~ finds that the respondent has engaged in an unlawful practice under this part and is liable for actual damages or a civil penalty, any amount due to the respondent by a state agency may be offset to satisfy ~~the commission's~~ final order or decision.

(e) No remedy shall be available to the aggrieved person unless the aggrieved person waives any and all rights or claims under Section 52 of the Civil Code prior to receiving a remedy, and signs a written waiver to that effect.

(f) ~~The commission director or his or her designee~~ may require a report of the manner of compliance.

(g) If ~~the commission director or his or her designee~~ finds that a respondent has not engaged in any practice which constitutes a violation of this part, ~~the commission director or his or her designee~~ shall state ~~its~~ his or her findings of fact and shall issue and cause to be served on the complainant an order dismissing the accusation as to that respondent.

(h) Any order issued by ~~the commission director or his or her designee~~ shall have printed on its face references to the provisions of the Administrative Procedure Act which prescribe the rights of appeal of any party to the proceeding to whose position the order is adverse.

Amend Government Code Section 12987.1 as follows:

12987.1. (a) Any party aggrieved by ~~the commission's~~ a final order for relief may obtain a review of that order in accordance with the provisions of Section 11523 of this code and Section 1094.5 of the Code of Civil Procedure except that the limitations on the court's remedial powers as described in subdivision (f) of Section 1094.5 of the Code of Civil Procedure shall not apply.

(b) The superior court, in reviewing ~~the commission's~~ final order, may award the following relief:

(1) Grant to the petitioner, or any other party, temporary relief, including, but not limited to, a restraining order, or other order as the court deems just and proper.

(2) Affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings, and enforce the order to the extent that it is affirmed or modified.

(c) Any party to the proceeding ~~before the commission~~ or aggrieved person may intervene as a matter of right in the superior court proceeding.

(d) When the time for petitioning a court for review of the ~~commission's~~ final order has expired, the department or any party to the ~~commission~~ proceeding may petition a court for a decree enforcing the commission's order. The court may grant any relief necessary to ensure compliance with the ~~commission's~~ final order.

(e) Notwithstanding subdivisions (a) to (d), inclusive, where the reviewing court denies a petition for writ of mandate seeking review of a ~~commission~~ final order or decision, the court shall enter judgment denying the petition and enforcing the ~~commission's~~ order or decision.

Amend Government Code Section 12989.2 as follows:

12989.2. (a) In a civil action brought under Section 12989 or 12989.1, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award the plaintiff or complainant actual and punitive damages and may grant other relief, including the issuance of a temporary or permanent injunction, or temporary restraining order, or other order, as it deems appropriate to prevent any defendant from engaging in or continuing to engage in an unlawful practice. The court may, at its discretion, award the prevailing party, other than the state, reasonable attorney's fees and costs, including expert witness fees, against any party other than the state.

(b) Notwithstanding any other provision of law, the ~~commission~~ department is not liable for the attorney's fees of parties to the administrative adjudication of cases, ~~brought before the commission~~, including proceedings under Sections 11523 and 12987.1 of this code and Section 1094.5 of the Code of Civil Procedure.
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Amend Government Code Section 19704 as follows:

19704. (a) It is unlawful to require, permit, or suffer any notation or entry to be made upon or in any application, examination paper, or other paper, book, document, or record used under this part indicating or in any way suggesting or pertaining to any basis listed in subdivision (a) of Section 12940, as those bases are defined in Sections 12926 and 12926.1.

(b) Notwithstanding subdivision (a), subsequent to employment, ethnic, marital status, and gender data may be obtained and maintained for research and statistical purposes when safeguards preventing misuse of the information exist as approved by the Department of Fair Employment and Housing Commission, except that in no event shall any notation, entry, or record of that data be made on papers or records relating to the examination, appointment, or promotion of an individual.

Amend Government Code Section 50085 as follows:

50085.5. ~~(a) Every local agency shall provide to the Fair Employment and Housing Commission a copy of any affirmative action plan and subsequent amendments to such plan adopted by the local agency.~~

~~(b)~~ (a) Every local agency which is required by federal law, rule or regulation to submit an annual statistical survey of the employment of the agency to the United States Equal Employment Opportunity Commission shall annually, commencing with January 1, 1975,

submit a copy of such survey to the Department of Fair Employment and Housing Commission.

~~(e)~~(b) Such reports and information shall constitute public records.

Amend Labor Code Section 3073 as follows:

3073. The Chief of the Division of Apprenticeship Standards, or his or her duly authorized representative, shall administer the provisions of this chapter; act as secretary of the California Apprenticeship Council; shall foster, promote, and develop the welfare of the apprentice and industry, improve the working conditions of apprentices, and advance their opportunities for profitable employment; shall ensure that selection procedures are impartially administered to all applicants for apprenticeship; shall gather and promptly disseminate information through apprenticeship and training information centers; shall maintain on public file in all high schools and field offices of the Employment Development Department the name and location of the local area apprenticeship committees, the filing date, and minimum requirements for application of all registered apprenticeship programs; shall cooperate in the development of apprenticeship programs and may advise with them on problems affecting apprenticeship standards; shall audit all selection and disciplinary proceedings of apprentices or prospective apprentices; may enter joint agreements with the Employment Development Department outreach education and employment programs, and educational institutions on the operation of apprenticeship information centers, including positive efforts to achieve information on equal opportunity and affirmative action programs for women and minorities; and shall supervise and recommend apprenticeship agreements as to these standards and perform such other duties associated therewith as the California Apprenticeship Council may recommend. The chief shall coordinate the exchange, by the California Apprenticeship Council, the apprenticeship program sponsors, the Department of Fair Employment and Housing Commission, community organizations, and other interested persons, of information on available minorities and women who may serve as apprentices.

Amend Penal Code Section 422.92 as follows:

422.92. (a) Every state and local law enforcement agency in this state shall make available a brochure on hate crimes to victims of these crimes and the public.

(b) The Department of Fair Employment and Housing shall provide existing brochures, making revisions as needed, to local law enforcement agencies upon request for reproduction and distribution to victims of hate crimes and other interested parties. In carrying out these responsibilities, the department shall consult ~~the Fair Employment and Housing Commission~~, the Department of Justice, and the Victim Compensation and Government Claims Board.